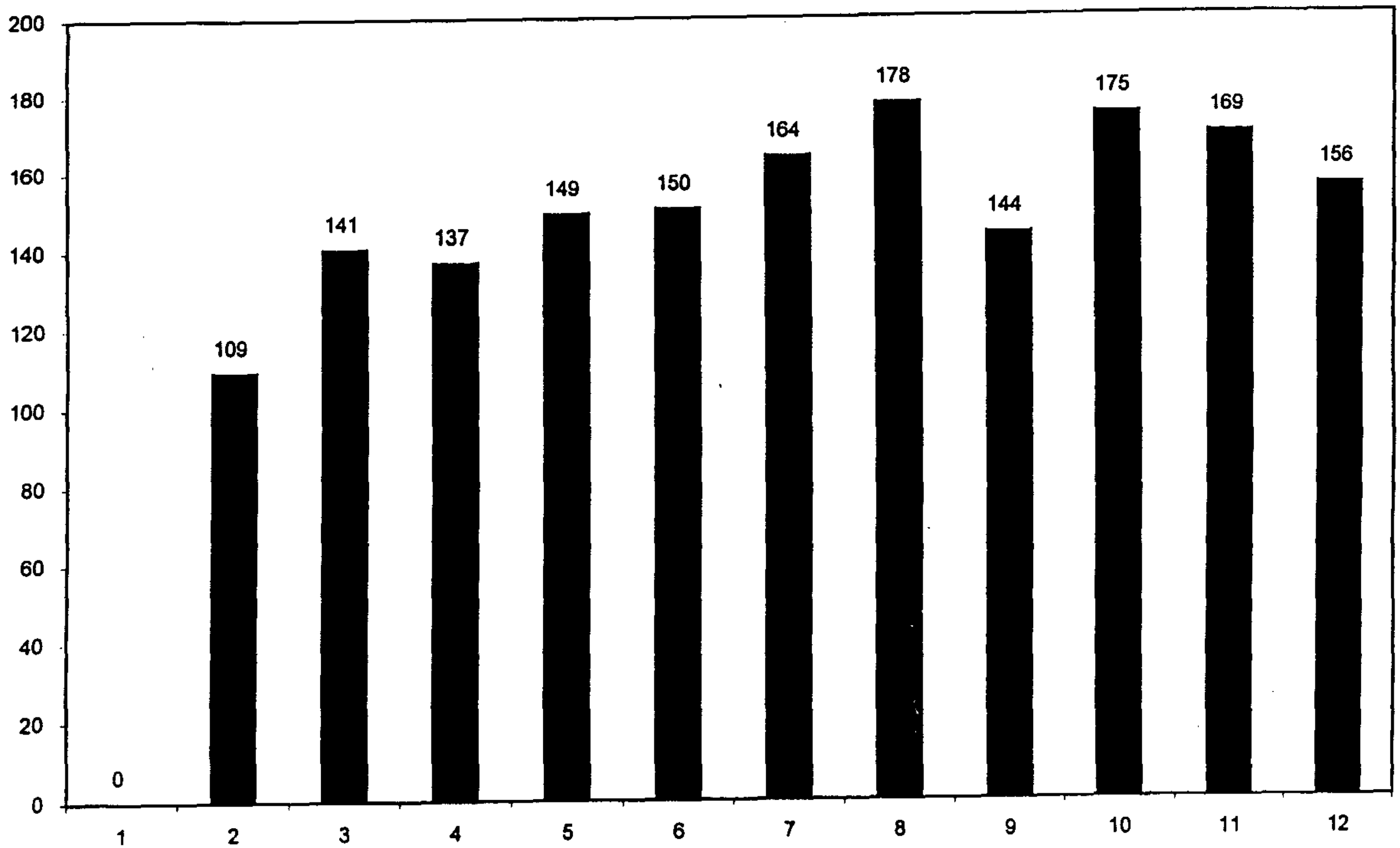
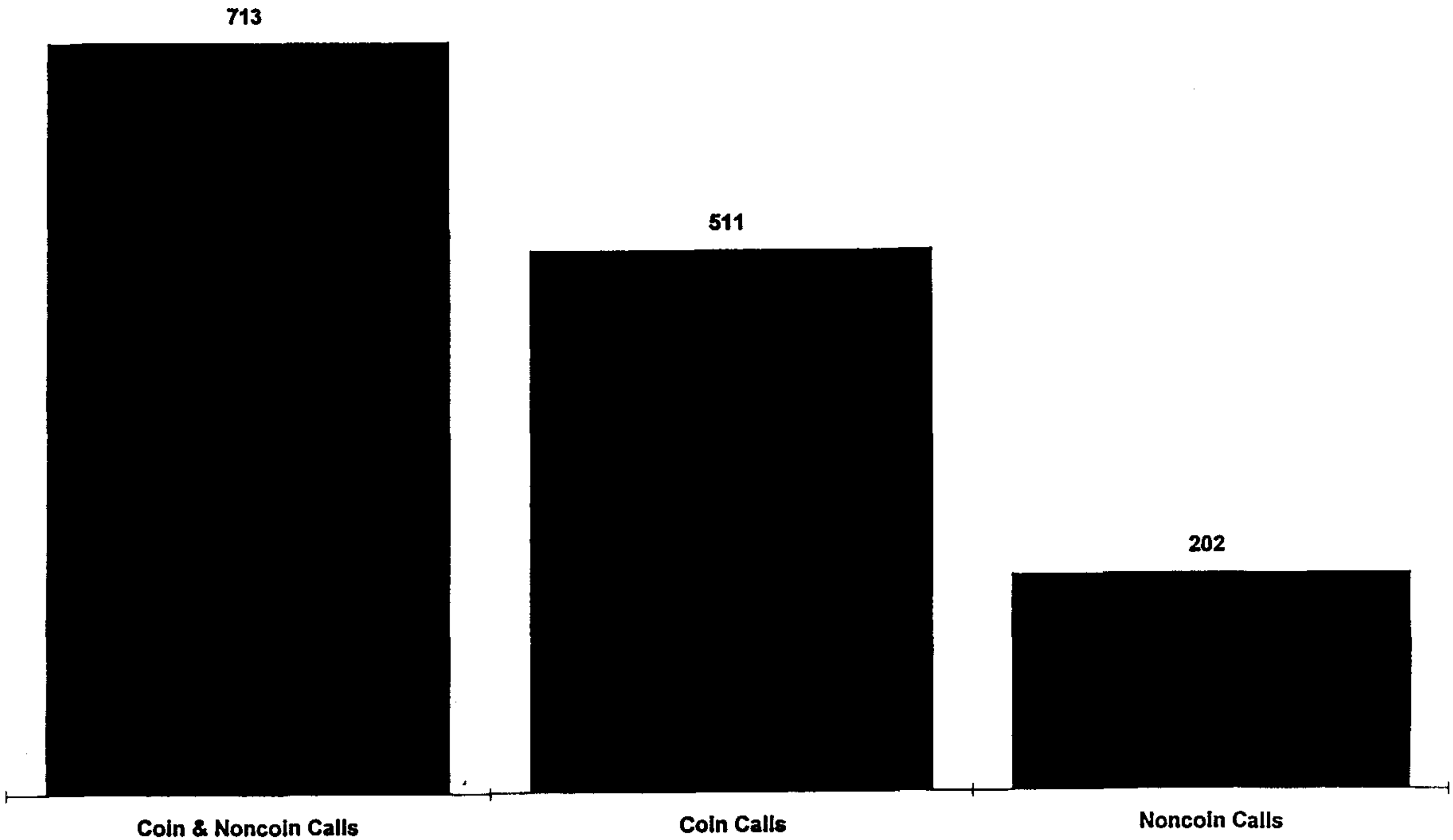
1996: Total Dial Around Calls By Month
9602-9612



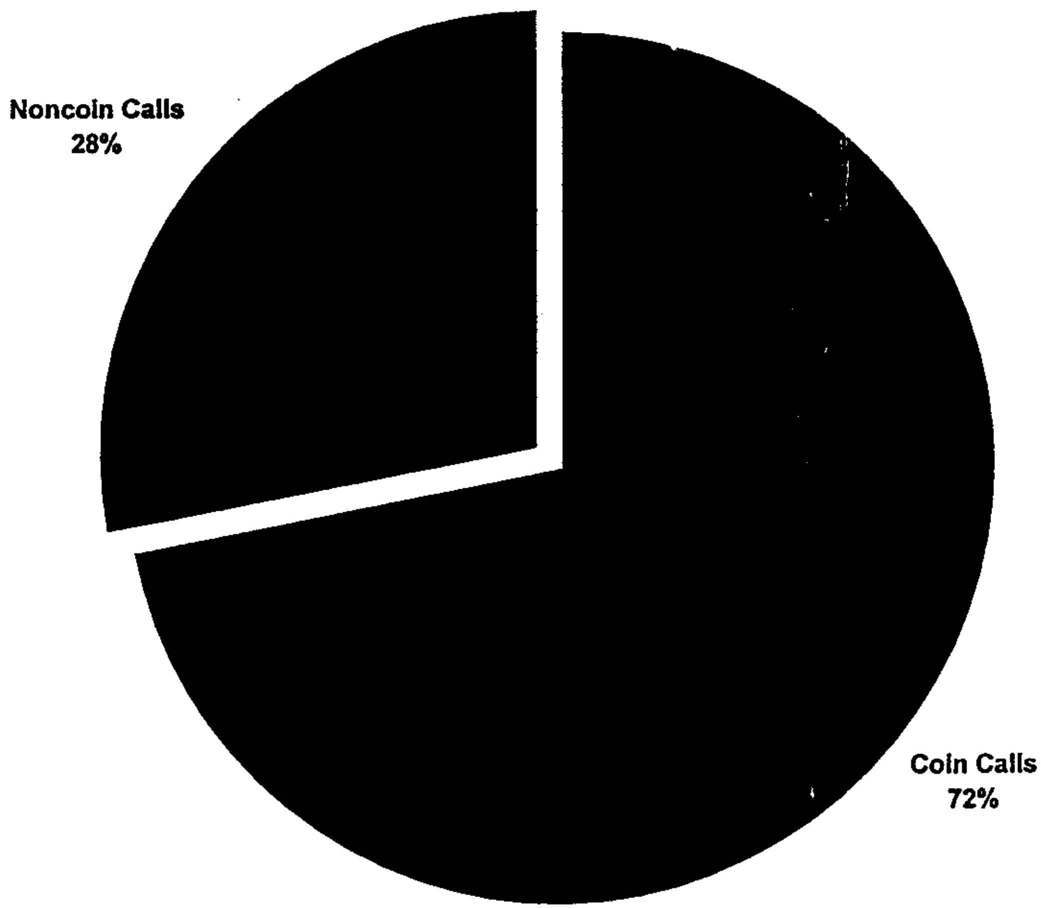
9/14/98

Coin & Noncoin Calls
11-Month Average: 9602-9612
(Average per ANI)



5/19/97

Coin & Noncoin Percentages
11-Month Average: 9602-9612
(Average per ANI)



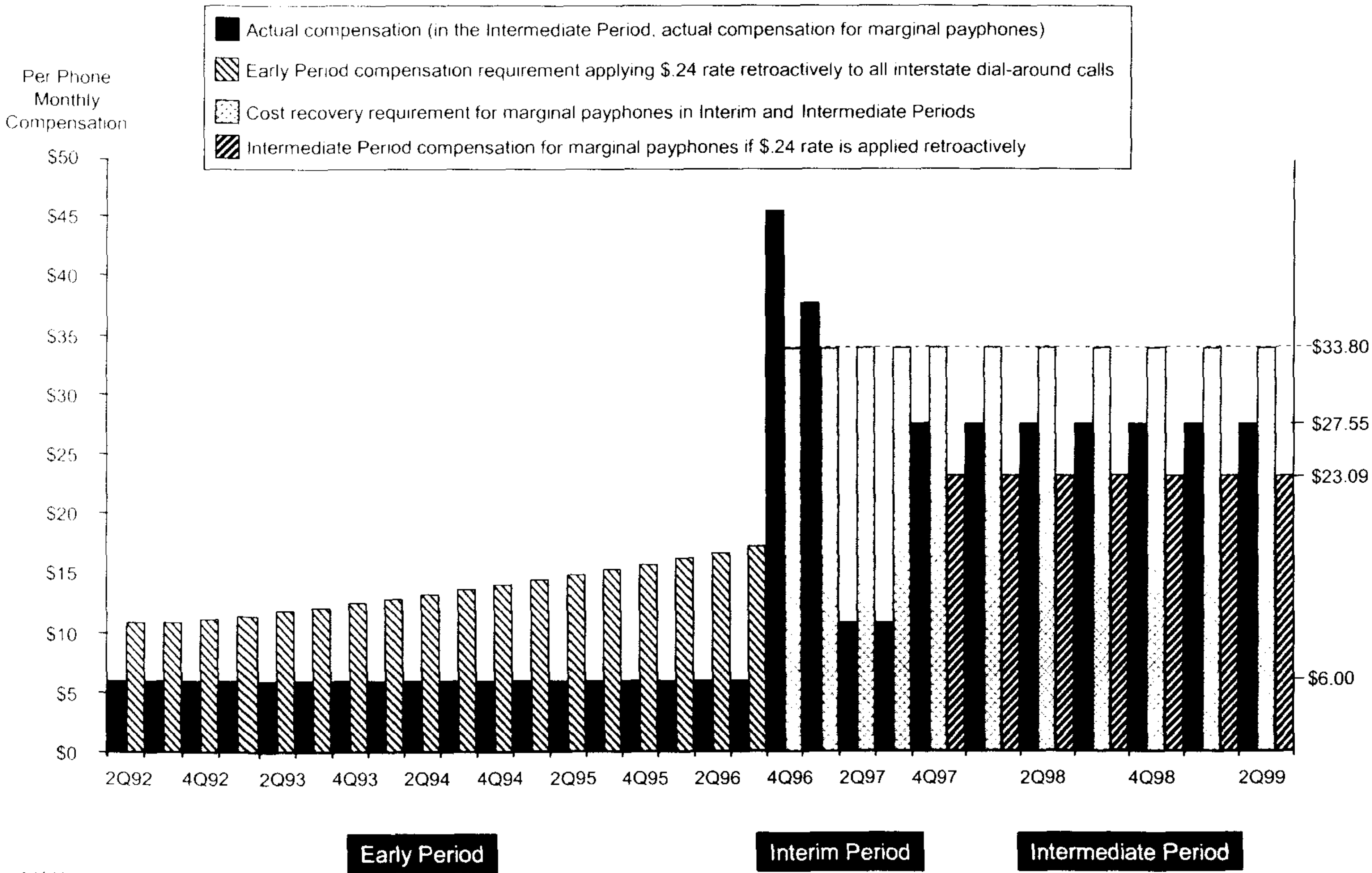
5/19/97

9

ATTACHMENT 2 TO
APCC EX PARTE LETTER OF
APRIL 15, 2002 RE EARLY PERIOD
(1992-1996) COMPENSATION:

INDEPENDENT PSP
COMPENSATION 1992-1999
(GRAPH)

Independent PSP Compensation 1992-1999



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ATTACHMENT 3 TO APCC EX PARTE LETTER OF APRIL 15, 2002 RE EARLY PERIOD (1992-1996) COMPENSATION:

ESTIMATE OF EARLY PERIOD UNDERPAYMENT OF INDEPENDENT PSP CLIENTS OF APCC SERVICES, INC. (SPREADSHEET)

ESTIMATE OF EARLY PERIOD UNDERPAYMENT OF

INDEPENDENT PSP CLIENTS OF APCC SERVICES, INC.

Year	Quarter	Avg. calls per month	Payment per phone per month @$.238/ call	Actually prescribed payment per phone per month	Underpayment per phone per month	Underpayment per phone for each quarter	Paid ANIs	Total under-payment
1992	2	45.0	$10.71	$6.00	$4.71	$4.71	150,000	$706,500
1992	3	45.0	$10.71	$6.00	$4.71	$14.13	150,156	$2,121,704
1992	4	46.3	$11.03	$6.00	$5.03	$15.08	164,359	$2,479,189
1993	1	47.7	$11.36	$6.00	$5.36	$16.07	169,555	$2,724,121
1993	2	49.1	$11.69	$6.00	$5.69	$17.08	169,954	$2,902,436
1993	3	50.6	$12.04	$6.00	$6.04	$18.12	180,462	$3,269,842
1993	4	52.1	$12.40	$6.00	$6.40	$19.19	196,682	$3,463,376
1994	1	53.6	$12.77	$6.00	$6.77	$20.30	206,628	$4,193,721
1994	2	55.2	$13.14	$6.00	$7.14	$21.43	173,677	$3,722,429
1994	3	56.9	$13.53	$6.00	$7.53	$22.60	183,130	$4,139,449
1994	4	58.6	$13.94	$6.00	$7.94	$23.81	187,017	$4,452,776
1995	1	60.3	$14.35	$6.00	$8.35	$25.05	196,427	$4,920,664
1995	2	62.1	$14.78	$6.00	$8.78	$26.33	202,776	$5,338,909
1995	3	63.9	$15.22	$6.00	$9.22	$27.65	206,709	$5,714,531
1995	4	65.8	$15.67	$6.00	$9.67	$29.00	219,020	$6,351,704
1996	1	67.8	$16.13	$6.00	$10.13	$30.40	222,399	$6,760,058
1996	2	69.8	$16.61	$6.00	$10.61	$31.83	232,958	$7,415,759
1996	3	71.9	$17.10	$6.00	$11.10	$33.31	242,451	$8,076,685
1996	4	74.0	$17.61	$6.00	$11.61	$11.61	254,646	$2,956,966
Total Period						$407.70		$81,710,821

11

ATTACHMENT 4 TO APCC EX PARTE LETTER OF APRIL 15, 2002 RE EARLY PERIOD (1992-1996) COMPENSATION:

NOTES TO ESTIMATE OF EARLY PERIOD UNDERPAYMENT OF INDEPENDENT PSP CLIENTS OF APCC SERVICES, INC.

NOTES ON ESTIMATE OF EARLY PERIOD UNDERPAYMENT OF INDEPENDENT PSP CLIENTS OF APCC SERVICES, INC.

1. **Average calls per month for Fourth Quarter, 1996**. In its most recent order in this proceeding, the Commission estimated that the monthly volume of access code and subscriber 800 calls that originated from payphones during the Interim Period was 148 calls per payphone per month. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fourth Order on Reconsideration and Order on Remand, FCC 02-22, released January 31, 2002, ¶12. It is reasonable to assume that at least half of these calls, or 74 calls, were interstate calls compensable under Section 226(e)(2) of TOCSIA. *See FCC Statistics of Common Carriers, 2000*, Table 4.10 (more than 50% of toll calls are interstate). Thus, a reasonable estimate of the average number of compensable dial-around calls originating from payphones at the end of the Early Period is 74 calls per payphone per month.

2. **Average calls per month for Third Quarter, 1992.** In *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Second Report and Order, 7 FCC Rcd 3251 (1992) (the "*1992 Compensation Order*"), the FCC found it reasonable to estimate that the average number of interstate access code calls originating from payphones was 15 calls per payphone per month. *1992 Compensation Order* at 3257 ¶ 36. In APCC's *ex parte* of December 13, 2001, the APCC produced results of three surveys which demonstrated that the ratio of subscriber 800 calls to access code calls ranged from 2:1 to 3:1. Based on a conservative assumption that the average ratio of interstate subscriber 800 calls to access code calls in the Third Quarter of 1992 (the first full quarter for which compensation was paid under the *1992 Compensation Order*) is only 2:1, we estimate that the average number of interstate subscriber 800 calls originating from payphones in 1992 was 30. Therefore, it is reasonable to estimate that total interstate dial-around calling in the first quarter of the early period was 45 calls per payphone per month.

3. **Average calls for other quarters.** With 45 calls per payphone per month in the first full quarter of the Early Period, and 74 calls per payphone per month at the end of the period, it is reasonable to plot the call volumes for the intervening quarters as increasing at a constant rate of growth (approximately 3% per quarter) from 45 to 74 calls per payphone per month. The estimated average call volumes for each quarter are as shown. The growth rate reflected in these estimates falls within the range of growth rates for toll-free calls for this period estimated in industry studies.

4. **Assignment of Rate.** It is also necessary to assign a per-call rate for purposes of estimating total compensation for this period. This study conservatively assigns to all interstate dial-around calls for the Early Period a per call rate equal to the current per call compensation rate of $.238, even though the Commission in 1992 found a significantly higher per-call rate ($.40) appropriate for access code calls.

5. **Monthly and Quarterly Per-Phone Underpayment.** The monthly per-phone underpayment for the Early Period is computed by subtracting the total prescribed rate of $6.00 per payphone per month, which actually applied during the Early Period, from the payment per phone per month that would have been paid in the Early Period if the Commission had applied the cost-based $.238 per-call rate to all interstate dial-around calls. The quarterly per-phone underpayment is computed by multiplying the monthly per-phone underpayment by three (except that for the second quarter of 1992, at the beginning of the Early Period, and the fourth quarter of 1996, at the end of the Early Period, when only one month of underpayment is counted, since only approximately one month of each of these quarters was compensated at the $6.00 rate).[1]

6. **Paid ANIs.** "Paid ANIs" is the number of payphone lines ("ANIs") for which compensation was paid to APCC Services, Inc. APCC estimates that for each quarter from June 1992 to the present, APCC Services, Inc. has collected compensation for well over 50% of the total payphone base of the independent payphone industry. As shown, the number of payphone lines for which APCC Services, Inc. collected compensation increased each quarter from 1992 to 1996, except for the second quarter of 1994, when a large PSP that had been a client of APCC Services, Inc. left the service and began doing its own collection in-house.

7. **Total Underpayment.** The total underpayment for each quarter is computed by multiplying the quarterly per-phone underpayment by the number of independent payphones for which APCC clients received compensation during that quarter. Total quarterly underpayments are then totaled to arrive at a total estimated underpayment for the entire Early Period, which is approximately $82 million. To this amount, interest must be added to reflect that independent PSPs have been deprived of these funds for an average of seven years.

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1 Beginning in 1994, AT&T and Sprint were granted waivers to switch from paying per-phone compensation to paying per-call compensation, at the rate of $.25 per call. As a result, the amounts collected by PSPs during the period when these waivers were in effect averaged less than the $6.00 per payphone per month originally prescribed by the Commission. Again being conservative, APCC's estimate of the total compensation actually received does not reflect this effective reduction in the total per-phone compensation payment, i.e., it assumes that the full $6.00 per phone per month continued to be collected by independent PSPs throughout the Early Period. By overestimating somewhat the total compensation actually received, this approach has the effect of underestimating the amount of the underpayment.

12

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	CC Docket No. 96-128

To: The Commission

PETITION FOR RECONSIDERATION

Albert H. Kramer
Robert F. Aldrich
Robert N. Felgar

2101 L Street, N.W.
Washington, DC 20037-1526

Attorneys for the American Public
Communications Council

April 3, 2002

TABLE OF CONTENTS

Page No.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))))))	CC Docket No. 96-128

To: The Commission

PETITION FOR RECONSIDERATION

American Public Communications Council, Inc. ("APCC"), hereby respectfully submits its petition for reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand, FCC 02-22, released January 31, 2002 ("*Interim Compensation Order*"), in the above captioned proceeding.

SUMMARY

The Commission should reconsider its reduction of the retroactive compensation rate from \$.238 per call to \$.229 per call, and reinstate the \$0.009 rate element set in the *Third Payphone Order* to compensate payphone service providers ("PSPs") for the four-month payment delay inherent in the dial-around compensation process. That delay occurred in the Interim Period just as in other periods. Removal of the element leaves PSPs uncompensated or at best, severely undercompensated for the four-month delay, and would unjustly enrich interexchange carriers ("IXCs") by awarding them an unwarranted discount on Interim Period compensation.

The Commission should also reconsider its decision to require PSPs to act as intermediaries in transferring payments from IXCs who paid less than their fair share of compensation during the Interim Period to IXCs who paid more than their fair share. This decision places upon PSPs the unnecessary and unwarranted burden of collecting compensation that is simply to be transferred by one IXC to another. In adding this unnecessary step, the Commission will greatly increase the total cost of the true-up and, therefore, the amount of compensation that goes uncollected.

The Commission should not permit IXCs to collect retroactive refunds by subtracting the amount claimed as a refund from future payments. Rather, the true-up should be handled like other commercial transactions in the telecommunications industry. IXCs should be required to bill PSPs for the amount of the refund and receive payment in the normal commercial course of events.

I. THE COMMISSION SHOULD REINSTATE THE $0.009 INTEREST COST ELEMENT IN THE RATE APPLICABLE TO RETROACTIVE ADJUSTMENTS OF COMPENSATION

A. Introduction

In the *Third Payphone Order*, the Commission addressed two issues concerning the application of interest charges to payphone compensation. *Implementation of the Pay Telephone Reclassification and Compensation provisions of the Telecommunications Act of 1996*, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999) ("*Third Payphone Order*"). First, in establishing a cost-based compensation rate, the Commission faced the problem of compensating PSPs for the regularly occurring time lag between the use of a payphone to make a dial-around call and the IXC's payment to the PSP for that dial-around call. To compensate PSPs for this regularly occurring time lag, which the Commission found to average four months in duration, the Commission included a cost component of $0.009 per call in the default per-call compensation rate of $0.24 established in the *Third Payphone Order*. *Id.*, ¶¶ 187-89, 191.

Second, the Commission found that for purposes of implementing retroactive compensation adjustments, PSPs and IXCs both would be entitled to a one-time interest payment on their underpayments and overpayments, respectively, that occurred in prior compensation periods. *Id.*, ¶ 197, n.427, ¶ 198. For this purpose, the Commission determined that "[t]he same rate of interest shall apply for both the Interim Period and [the Intermediate] Period." *Id.*, ¶ 198. Significantly, this one-time interest payment consists only of interest on *the amount of an underpayment or overpayment* of dial-around compensation made by IXCs. By contrast, the $0.009 cost component to compensate PSPs for the recurring four-month payment delay represents an interest payment on the *total cost-based dial-around compensation rate.*

The Commission thus addressed interest payments in two different ways: first, as a built-in part of the $0.24 rate, in order to compensate PSPs for a regularly occurring four-month delay in collecting the total dial-around compensation payment due; and second, as a one-time payment in conjunction with retroactive compensation adjustments, and applied only to the amount of the adjustment, to compensate both PSPs and IXCs for the time lag in correcting underpayments or overpayments of dial-around compensation that the Commission found or anticipated it would find to have occurred during the Interim and Intermediate Periods.

B. The Third Report And Order Did Not Stipulate That The $0.009 Cost Element Should Be Removed From The Interim Compensation Rate

The *Interim Compensation Order* asserts that "[i]n the Third Report and Order, the Commission stipulated that this $0.009 would be removed from the compensation rate for the interim period." *Id.* However, the Commission's *Third Payphone Order* actually said something different. It stated that "[w]e also anticipate adjusting the default compensation amount for the Interim Period to account for FLEX ANI costs and interest." *Third Payphone Order* at 2636, ¶ 197. A footnote at the end of this sentence elaborated that "[b]ecause PSPs have not received full compensation for this period, we will allow the recovery of interest on the unpaid amount." *Id.*, n.427. It is clear that this is a reference to the interest payment that would be ***added*** to compensate PSPs for the time lag in recovering the "unpaid amount," and ***not*** a reference to a ***subtraction*** of the interest component that was included in the total cost-based compensation rate to cover the recurring four-month delay. The use of the words "recovery of interest" makes it apparent that in the *Third Payphone Order* the Commission contemplated that any interest adjustments will increase rather than decrease the amount that PSPs receive in a recovery. Thus, the interest adjustment that the Commission contemplated in the *Third Payphone Order* was not an adjustment to exclude the $0.009 cost component from the $0.24 per-call compensation rate, but rather an adjustment to the amount of money paid to PSPs in a true-up to include interest on the difference between the original payment and the adjusted compensation amount.

C. The Four-Month Payment Delay Occurred in the Interim Period Just as in Other Periods

The Commission reasoned in the *Interim Compensation Order* that the \$0.009 cost component is not applicable to the Interim Period "because it was calculated specifically for the four-month delay in payment for the per-call period." *Interim Compensation Order*, ¶ 9. But the four-month payment delay is as applicable to the Interim Period as to other periods. Four-month payment delays also existed in the Interim Period when compensation was paid on a per-phone basis.[1] The process by which dial-around compensation was paid by IXCs to PSPs was similar regardless of whether compensation was paid on a per-call or per-phone basis; the delay in the payment of such compensation was therefore not affected by the use of a per-phone payment method.

D. The Commission's Rate Change Leaves PSPs Uncompensated or Severely Undercompensated for the Four-Month Payment Delay

The Commission, in the *Interim Compensation Order*, does not set forth the period during which interest on underpayments will be calculated – from the date of the original payment for a quarter or from the mid-point of the quarter for which payment was made.[2] Of course, if interest is calculated from the date of payment than PSPs will be completely uncompensated for the four-month payment delay inherent in the dial-around

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[1] The payment delay during the Interim Period was actually four-and-a-half months. For example, when PSPs sought compensation for the first quarter of 1997, they submitted their list of ANIs in April or early May of 1997 and payments were due on July 1, 1997. Thus, there was a delay of approximately four-and-a-half months from the midpoint of the first quarter to the date of payment. The same four-and-a-half month payment delay will be experienced for the first quarter of 2002.

[2] If the latter, then, for example, if IXCs underpaid PSPs for the first quarter of 1997, interest on the underpaid amount would run from February 15, 1997 until the time that the interest is paid. This would cover the period of the payment delay which, as described in footnote 1, ran from February 15,1997 to July 1, 1997.

compensation process. But even if interest on underpayments is calculated from the mid-point of the quarter, that will not make up for the removal of the $0.009 cost compensation element designed to compensate PSPs for the four-month delay.

Interest paid to PSPs can only compensate for the four-month payment delay if it is calculated on the entire amount of dial-around compensation owed PSPs; it is this entire amount of compensation for which PSPs wait four months for payment. However, the *Interim Compensation Order* specifies interest only with respect to the amount of the ***underpayment*** – *i.e.*, on the difference between the compensation originally paid and the compensation that the IXC is now determined to owe PSPs. Regardless of when interest begins to accrue, therefore, PSPs would be deprived of compensation on the remainder of the Interim Period compensation.

In addition, using the lower IRS rate of interest to compensate PSPs for the four-month payment delay is inconsistent with the Commission's treatment of the four-month delay in the *Third Payphone Order*. The Commission determined in the *Third Payphone Order* that to adequately compensate PSPs for the payment delay, PSPs should be paid interest on unpaid compensation at a rate of 11.25% – the cost of capital of large LECs.[3] On the other hand, in the *Interim Compensation Order* the Commission would compensate PSPs for the four-month payment delay, if at all, by applying the IRS rate of interest to the underpaid or overpaid amounts. Because the IRS rate of interest is significantly lower than 11.25%, PSPs are compensated for the same length payment delay at one rate for the Interim Period and at another, higher rate for the period after the *Third Payphone Order* was released. In effect, by calculating interest for true-up payments from the midpoint of the relevant quarter, the Commission is establishing an effective cost element for interest

[3] The cost component of $0.009 was derived assuming an interest rate of 11.25%.

for the Interim Period that is much lower than the $0.009 cost element declared appropriate by the Commission in the *Third Payphone Order*. The Commission has provided no rational reason for this disparate treatment of the two time periods and none exists.

The same reasons provided by the Commission in the *Third Payphone Order* and *Interim Compensation Order* for calculating interest during the four-month payment delay using an interest rate of 11.25% on a going-forward basis, are applicable to the Interim Period. The Commission explained in the *Interim Compensation Order* that "it relied on the LEC capital cost rate [of 11.25% to calculate interest on a going-forward basis] to reflect the unusual nature of billing and compensation in the payphone industry, where calls are aggregated by calendar quarter and bills are not typically paid for several months after that." *Interim Compensation Order*, ¶ 33. In the Interim Period, PSPs also require compensation for repeated four-month payment delays rather than for a one time delay characteristic of a true up.

The Commission also explained in the *Interim Compensation Order* that using an interest rate of 11.25% to calculate interest for the four-month payment delay on a going-forward basis is appropriate because dial-around compensation flows in one direction, from IXCs to PSPs and most payphones are owned by large LECs. Presumably because most payphones are owned by large LECs the Commission believed that it was appropriate to use their cost of capital as the interest rate. *Interim Compensation Order*, ¶ 33. For the Interim Period as well, the interest on the four-month payment delay is relevant only to payments going in one direction, from IXCs to PSPs. As explained in the section that follows, it is a further error for the Commission to award IXCs interest for the four-month payment delay with respect to overpayments made to PSPs during the Interim Period.

E. Applying the $.229 Rate to Refunds Owed by PSPs to IXCs Compounds the Inequity to PSPs

The *Interim Compensation Order* applies the lower ($.229) compensation rate without the $0.009 cost element even in the situation where a PSP must refund compensation to an IXC. *Id.*, ¶ 10. Such treatment not only leaves PSPs *completely uncompensated* for the four-month payment delay inherent in the dial-around process, but also effectively rewards the IXC for the delay. PSPs are not compensated at all for the payment delay because in a refund situation, it is the IXC, not the PSP, who would collect the interest. In fact, if the interest paid to IXCs is calculated from the midpoint of the relevant quarter, PSPs would actually pay the IXCs interest for the four-month payment delay. In other words, IXCs will hold onto PSPs' dial-around compensation for four months and be paid interest for doing so.

A scenario under which IXCs are paid interest while holding onto PSPs' money is clearly inconsistent with Commission policy. It would simultaneously provide IXCs with a major windfall and shortchange PSPs.[4] The Commission has explained on a number of occasions, including in the *Interim Compensation Order*, that a "princip[al] purpose" of its interest payment policies "is to avoid unjust enrichment to the party holding money owed to another carrier."[5] *Id.*, ¶ 33. Another important purpose is to make parties whole.[6] To

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[4] IXCs have already recovered – indeed, overrecovered – their Interim Period compensation payments from their customers. Thus, any refund of compensation represents a windfall for IXCs. IXC collection of interest payments intended for PSPs would be a windfall on top of a windfall.

[5] *See also General Communications, Inc. v. Alaska Communications Systems Holdings, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 2834, ¶ 73 (2001).

[6] *In the Matter of MCI Telecommunications Corporation v. Pacific Bell Telephone Company*, 8 FCC Rcd 1517, 1530, ¶ 148 (1993).

avoid unjust enrichment of IXCs and compensate PSPs for the four-month payment delays, not only should IXCs not receive interest for holding onto PSPs' money during the four-month payment delays, but IXCs should also pay PSPs interest at a rate of 11.25% – the rate deemed appropriate by the Commission to compensate PSPs for the four-month payment delays in both the *Third Payphone Order* and the *Interim Compensation Order*. In other words, the per-call interim compensation rate should include the $0.009 cost element and thus be raised to $0.238 per call.

F. The Commission Should Restore the $0.009 Cost Component to the Interim Compensation Rate

As discussed above, the Commission's decision in the Interim Compensation Order to remove the $0.009 cost component shortchanges PSPs, in several important respects. First, removal of the cost component undercompensates PSPs, at best, for the four-month payment delay when an IXC must pay a PSP in a true-up. Second, removal of the cost component fails to compensate PSPs at all for the four-month payment delay when a PSP refunds compensation to an IXC. In addition, the Commission's decision to remove the $0.009 cost component from the interim compensation rate is inconsistent with the Commission's decision to include this cost component in the compensation rate applicable to other periods. The Commission concluded in the *Third Payphone Order* that the $0.009 cost component is necessary to fully compensate PSPs for the four-month payment delays inherent in the dial-around compensation process; the same four-month delay existed during the Interim Period. Disparate treatment of the two time periods is unreasonable. To correct these errors and inequities, the Commission should restore the $0.009 cost component to the Interim Period compensation rate.